

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

MEMORIAL HOSPITAL OF SALEM COUNTY

Employer

and

Case 4-RC-21697

HEALTH PROFESSIONALS AND ALLIED  
EMPLOYEES (HPAE)

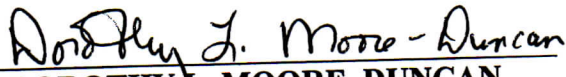
Petitioner

**SUPPLEMENTAL DECISION ON OBJECTIONS TO ELECTION**

On January 10, 2011, the undersigned Regional Director issued a Notice of Hearing on Objections to Election setting for hearing Employer's Objections 1 to 16 and 18 to 20. On February 16, 2011, Petitioner filed with the Board a Request for Special Permission to Appeal the Notice of Hearing on Employer's Objections 1 to 16. On February 22, 2011, the Board issued an Order granting Petitioner's Request, finding that there were no substantial and material factual issues that would warrant setting Employer's Objection 1 to 16 for hearing, and remanding this proceeding to me for further consideration consistent with its Order. A copy of the Board's Order is attached hereto as Appendix A.

For the reasons set forth in the Board's Order, I find that Employer's Objections 1 to 16 lack merit and they are hereby overruled. Employer's Objections 18 to 20 remain pending.

Dated at Philadelphia, Pennsylvania, this 24<sup>th</sup> day of February, 2011.<sup>1</sup>

  
**DOROTHY L. MOORE-DUNCAN**  
Regional Director, Fourth Region  
National Labor Relations Board

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<sup>1</sup> Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, DC 20570-0001. A request for review may also be submitted by electronic filing through the Agency's website at [www.nlr.gov](http://www.nlr.gov). A copy of the request for review must be served on each of the other parties to the proceeding, and with the Regional Director either by mail or by electronic filing. Filing request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website. The request for review must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review must be received by the Board in Washington by the close of business on **March 10, 2011**. Under the provisions of Section 102.69(g) of the Board's Rules and Regulations, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director and which is not included in the Supplemental Decision, is not part of the record before the Board unless appended to the request for review or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.



UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SALEM HOSPITAL CORPORATION a/k/a THE  
MEMORIAL HOSPITAL OF SALEM COUNTY  
Employer

Case 4-RC-21697

and  
HEALTH PROFESSIONALS AND ALLIED  
EMPLOYEES (HPAE)  
Petitioner

ORDER

The Petitioner's Request for Special Permission to Appeal is granted. Having carefully considered the Special Appeal, we find merit in the Petitioner's contention. We therefore reverse the Regional Director's determination to set the Employer's Objections 1-16 for hearing and remand the proceeding for further consideration.

In her initial Decision and Direction of Election, the Regional Director determined, among other things, that the Employer's RNs who served as charge nurses were not statutory supervisors.<sup>1</sup> On December 9, 2010, the Board denied the Employer's Request for Review on this and other issues.<sup>2</sup>

The Petitioner won the election, 73-48, with 21 nondeterminative challenges. The Employer filed 20 objections. After a preliminary investigation, the Regional Director issued a Notice of Hearing on Objections to Election, and set 19 objections for hearing.<sup>3</sup> Subsequently, the Regional Director issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, in which the objections case was consolidated with an unfair labor practice case. That case is set for hearing on February 22, 2011.<sup>4</sup>

The Petitioner now seeks special permission to appeal the Regional Director's decision to send to hearing 16 of the objections. The Petitioner asserts that all of those

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<sup>1</sup> The Regional Director found that two charge nurses in the Surgical Services Unit -- Strang and Nardelli -- were statutory supervisors because they used independent judgment in assigning patients to nurses. There was no request for review of this finding.

<sup>2</sup> In addition to the supervisory issue, the Board also denied review on the following broad issues: whether the Regional Director erred in refusing to treat the Employer's unfair labor practice charge as a blocking charge and in refusing to transfer this case to another region; whether the Hearing Officer closed the hearing prematurely and was biased/prejudiced against the Employer; and whether the Board's Healthcare Rule is inconsistent with Section 9(c) (5) of the Act.

<sup>3</sup> The Employer withdrew Objection 17.

<sup>4</sup> The Petitioner states that it is withdrawing the unfair labor practice charges that form the basis for the complaint. We have been administratively advised that the charges have been withdrawn.

objections are based on matters previously raised and decided when the Board denied the Employer's Request for Review. We find merit in the Petitioner's contention.

A hearing on objections is required with respect to objections that raise substantial and material factual issues. Rules and Regulations, Sec. 102.69(d). However, where there are no such issues, a hearing is not warranted. American Medical Response, 356 NLRB No. 42, slip op. at 1 n. 2 (2010). This is especially so where the objections are based on matters on which the Board has already ruled. To allow relitigation of such issues without new or previously unavailable evidence wastes scarce resources on issues that have been settled.

Here, the Employer's Objections 1-16 are based on contentions on which the Board denied review. Objections 3-16 specifically state that the Board erred in denying review on the issue. The Regional Director stated that the Employer was relying on the record in the pre-election proceeding to support these objections. Objections 1 and 2 are based on contentions of supervisory status, on which the Board has already ruled. In these circumstances, we find that there are no substantial and material factual issues that would warrant a hearing. Accordingly, we remand this proceeding to the Regional Director for further consideration consistent with this Order.<sup>5</sup>

WILMA B. LIEBMAN, CHAIRMAN

CRAIG BECKER, MEMBER

BRIAN E. HAYES, MEMBER

Dated, Washington, D.C. February 22, 2011

<sup>5</sup> Member Hayes concurs in granting the special appeal to the extent that it seeks to preclude re-litigation of matters previously decided by the Board's denial of the Employer's request for review.